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IN THE
Supreme Court of the United States

OCTOBER TERM, 1954

No. 6

B. CLINTON WATSON, ET UX
Appellants-Petitioners

VERSUS

**EMPLOYERS LIABILITY ASSURANCE
CORPORATION, LTD.**
Appellee-Respondent

On Appeal from, and Certiorari to, the United States
Court of Appeals for the Fifth Circuit

BRIEF OPPOSING MOTION TO DISMISS

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MAY IT PLEASE THE COURT:

Employers Liability Assurance Corporation, Ltd.
has moved the Court to recall its order of May 3, 1954,
granting a writ of certiorari in this case.

We submit that the motion is frivolous.

The appellants, in their appeal from the judgment entered by the Court of Appeals, alternatively requested a writ of certiorari strictly in accordance with the holding of this Court in *Bradford Electric Light Company v. Clapper*, 284 U. S. 221, 52 S. Ct. 118, 76 L. Ed. 254.

What appellee argues, boiled down to its essentials, is that the alternate certiorari application should have been on a separate piece of paper. This is a throw back to the middle ages when form was all important and alone attended to, and substance was disregarded.

Appellee to the contrary notwithstanding, appellants never asked this Court to treat the appeal papers as a petition for certiorari but applied for certiorari only in the alternative.

Appellee insists that under U. S. C. Title 28, Sec. 1254(2) the Court may not treat the papers on appeal as a petition for certiorari when applied to a decree of a Court of Appeals and that this may be done only with respect to a decision of the highest court of a state.

As we have already stated, appellants did not ask that the appeal papers be treated as a petition for a writ nor did the Court so treat them. Appellants asked for a writ of certiorari alternatively only and the Court in its ruling of May 3, 1954 postponed to a hearing on the merits the question of jurisdiction on appeal and granted the alternative petition for a writ.

Appellee insists that under the wording of U.S.C. Title 28, Sec. 1254(2), the Court is precluded from entertaining a review on certiorari. This wording is no different in meaning than that contained in Sec. 240 of the Judicial Code as amended by the act of February 13, 1925, which U.S.C. Title 28, Sec. 1254(2) replaced. Nevertheless this Court in *Bradford Electric Light Company v. Clapper*, supra, granted the *alternative* petition for writs.

It is respectfully submitted that appellee's motion be overruled.

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